IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 19.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal Nos.2943 & 2944 of 2001; W.P. Nos.12487, 21048, 41834/2002; 3154, 3420, 3471, 3662, 3800, 18336, 19935, 21033, 25489, 35104 of 2003; W.P.SR. No.107970 of 2004; W.P.(MD) Nos.1294 to 1300, 1885 to 1893, 1896, 1906, 1918, 2037, 2065/2004; W.P. Nos.2981, 11154, 11394, 11842, 11933, 12565, 12566, 16857, 16942, 16943/04; W.P. Nos.40301 & 40316 of 2005
and
WPMP Nos.16814, 61832, 61833/02; 3941, 4297, 4354, 4625, 4797, 24922, 26143, 26144/03; WPMP SR. No.107972/04; WPMP(MD) Nos.1297 to 1303, 1918 to 1920, 1929, 1938, 1954, 2096, 2112/04; WPMP Nos.13924, 14023, 19964, 20091, 20093/04 & 43232 of 2005.

W.A. No.2943 and 2944 of 2001:-

C.Thiagarajan ... Appellant in both.

vs.

1. The State of Tamilnadu, Rep. by Secretary to Govt.,
Health & Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Drugs Control,
Tamil Nadu, Chennai-6.

3. The District Collector,
Nagercoil, Kanyakumari District.

4. The Superintendent of Police,
Nagercoil, Kanyakumari District.

5. The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District. ... Respondents in both.

C.Jayakumar
Sivanadha Sidha Aayunadu Pharmacy
Villukkuri Post K.K.District. ..Petitioner in WP 12487/2002

Raghu ..Petitioner in WP 21048/2002

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M.Ramadhas
Prop.Gomadha Aayunadu Pharmacy
Rajahkamangalam, K.K.District. ..Petitioner in WP 41834/2002

Vinith Ayurvedhu Pharmacy
by its Licensee S.Sivachoubaga Kumar
Kanyakumari District. ..Petitioner in WP 3154/2003

Ariya Ayuredha Parmacy
rep. by its Licensee R.Rajan
Kanyakumari District. ..Petitioner in WP 3420/2003

Sivanadha Pharmachy
Prop.V.Ponmiah Vaidhiyar
Kanyakumari District ..Petitioner in WP 3471/2003

R.Murugan
Vithu Parmacy
Kanyakumari District ..Petitioner in WP 3662/2003

Rajaseelan
Pharmacy, Prop.A.Gunaseelan
Saravana Bhavan,
Kanyakumari District. ..Petitioner in WP 3800/2003

V.Thangaraj
Licensee, New Star Ayurvedha
Parmachy, Oothukuzhi, Nagoor Post,
Kalkulam Taluk, K.K.District. ..Petitioner in WP 18330/2003

N.G.Ayurveda Parmacy
18-88-B1, Vatta Vilai
Pathiramangalam, Kappiyarai Post,
Kanyakumari District. ..Petitioner in WP 19935/2003

Kumar Ayurveda Vaithiyasalai
Pro.J.Britto Jayakumar,
Kanyakumari District. ..Petitioner in WP 21033/2003

Seelam Seeman Ayurvedic Pharmacy
by its Licencee R.Sundaralingam
Nagarcoil ..Petitioner in WP 25489/2003

E.Kaladharan
Sree Vinayager Ayurveda
Vaithiya Salai, Perumselva Vilai
Kanyakumari District. ..Petitioner in WP 35104/2003

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C.Thiagarajan ..Petitioner in WP Sr 107970/2004
and WPMP SR 107972/2004

New Star Ayurveda Pharmacy
by its Licensee V.Thangaraj
1940-F, Oolthukuzhi,
Kalkulam Tk.,K.K.District.
..Petitioner in WP1294/2004

Ravichandra Pharmacy by its Licensee
S.Sivagnanam Vaidyar,Kanyakumari ..Petitioner in WP 1295/2004

Jesus Marunthagam by its Licensee
V.Daniel Vaidyer, Kozhippoor Vilai
Kalkulam Tk.,
Kanyakumari District. ..Petitioner in WP 1296/2004

Jothi Ayurveda Pharmacy by its
Licensee K.Krishnan, Thangaparavila
Arumanai Post,
Valaivancode Tk.K.K.District. ..Petitioner in WP 1297/2004

New Jeyachandra Pharmacy by its
Licensee P.Thangamuthu
Nagercoil, K.K.District. ..Petitioner in WP 1298/2004

Susresh Ayurveda Pharmacy by its
Licensee P.Stephen, Nagercoil-2.
K.K.District. ..Petitioner in WP 1299/2004

Prakash Ayurveda Pharmacy, by its
Licensee Mary Rajeswari,
Tiruchengode Post,
Kalakulam, K.K.District. ..Petitioner in WP 1300/2004

Kumari Ayurvedha Pharmacy
Prop-I, Lingan, Kovalam Post,
Kanyakumari Distict ..Petitioner in Wp 1885/2004

Ranji Ayuvedha Pharmachy
Prop.D.Thankiah, 5-42-B,
Thaminathu Konam (South)
Erumbuliyur Post,
Kanyakumari District. ..Petitioner in WP 1886/2004

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Madava Ayurvedha Pharmacy
Prop.M.Chidambara Prasad
Thuckaly Post, Kanyakumari District. ..Petitioner in WP 1887/2004

R.S.Ayurvedha Pharmachy
Prop.P.Selvaraj,Kanyakumari District. .. Petitioner in WP 1888/2004

Sri Vinayagar Ayurvedha Pharmacy
Prop.A.Chandrasekaran,
Kanyakumari District. ..Petitioner in WP 1889/2004

Shree Anjaneya Pharmacy
Prop.S.Ramakrishnan ..Petitioner in WP 1890/2004

Sarojini Ayurvedha Pharmacy
Prop.G.John Hentry ..Petitioner in WP 1891/2004

Sahaya Arul Ayurvedic Pharmacy
Prop.A.Jesu Arul ..Petitioner in WP 1892/2004

Sun Aurvedha Pharmacy
Prop.S.Thangavelsan, Kanyakumari ..Petitioner in WP 1893/2004

Mr.P.Balamurugan
Proprietor M/s. Meenakshi Ayurveda
Pharmacy, Agastheeswaran Tk.
Kanyakumari District. ..Petitioner in WP 1896/2004

Mrs. P.Banumathy
Prop.M/s. Shanthi Ayurvedu Pharmacy
No.8a/16, Karungulam District. ..Petitioner in WP 1906/2004

Mrs. P.Krishnaveni
Proprietor,
M/s. Prithik Ayurvedi Pharmacy
Kanyakumari District. ..Petitioner in WP 1918/2004

Mr.S. Sivasenbaga Kumar
Proprietor,
M/s. Rajam Ayurveda Pharmacy
Kanyakumari District ... Petitioner in W.P.2037/2004

Mr.S. Sivasenbaga kumar
Proprietor
M/s. vinoth Ayurveda Pharmacy
Agateeswaram Taluk,
Kanyakumari District. ... Petitioner in W.P.2065/2004

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J. John Rose
Managing Director,
M/s. Maruthi Ayurvedic Pharmacy
Kanyakumari District ... Petitioner in W.P.2981/2004

R. Thangaswarnam
Karambattu Post,
Kanyakumari District ... Petitioner in W.P.11154/2004

John Barnet
Saral Vilai,
Kanyakumari District ... Petitioner in W.P.11394/2004

R. Chelladurai
Kanyakumari District ... Petitioner in W.P.11842/2004

1. Dr. A.K. Jayakumar
2. W. Shaji
3. C. Charles
4. C. Rajan
5. A. Ani alias Vijayaraj
6. A. Nelson
7. M. Selvaraj ... Petitioner in W.P.11933/2004

S. Stephen
Proprietor
M/s. Sanju Ayurveda Pharmacy
Maharajapuram,
Agatheeswaram
Kanyakumari District. ... Petitioner in W.P.12565/2004

S. Ramakrishnan,
Proprietor
M/s. Sri Anjaneya Pharmacy
Kanyakumari District ... Petitioner in W.P.No. 12566/2004

T. Subramanian
Proprietor
M/s. Amirtham Ayurveda Pharmacy
Nagercoil, Kanyakumari District.... Petitioner in W.P.16857/2004

Tmt. P. Krishnaveni
Proprietor
M/s. Prithik Ayurveda Pharmacy
Nagercoil, Kanyakumari District... Petitioner in W.P.16942/2004

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Thiru A. Swaminathan,
Proprietor
M/s. Vijay Ayurvedic Pharmacy
Agatheeswaram Post,
Nagercoil, Kanyakumari District... Petitioner in W.P.16943/2004

V. Thangaraj
Licence of New Star
Ayurveda Pharmacy
Kanyakumari District. ... Petitioner in W.P.40301/2005

S. Sivagnanam Vaidiyas
Licensee of Ranichandra Pharmacy
Thickanan Code and Post
Kanyakumari District ... Petitioner in W.P.40316/2005

VS

1. The Director of Drugs
Control Board, Chennai.

2. The District Collector,
Kanyakumari District
at Nagercoil
Kanyakumari District.

3. The Superintendent of Police,
Kanyakumari District
at Nagercoil
Kanyakumari District.

4. The Assistant Commissioner (Excise)
Nagercoil, Kanyakumari District.

5. The Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.

6. The Inspector of Police,
Prohibition and Excise wings
Thuckkalai,
Kanyakumari District. ... Respondents in
W.P.12487/2002 RR5,2 to 4 & Nil in W.P.21048/2002, RR 1,2,3,4, Nil & 6 in W.P.41834/2002, RR1 & 2 in W.P. 19935/2003 R1 Nil RR1 and 2 in W.P.25489/2003, R1 Nil RR2 & 3 RR4& 5

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Nil & R5 in W.P.35104/2003 R1 Nil and RR 1& 2 in W.P.11394/2004, R1 Nil and R1 in W.P.12566/2004 & R1 in W.P.16942/2004 R1 Nil and R2 in W.P. 16857/2004 & R1 Nil and RR2 and 3 in W.P.16943/2004 R1 Nil and R2 in WPs.40301 & 40316/2005.

1. The Commissioner of Prohibition
and Excise, Chepauk, Chennai-5 ... R1 in W.P.21048/2002
R2 in W.P.41834/2002
R2 in W.P.18336/2003
R1 in W.P.21033/2003
R1 in W.P.35104/2003
R3 in W.P.11394/2004
R2 in W.P.12565/2004
R2 in W.P.12566/2004
R1 in W.P.16857/2004
R1 in W.P.16943/2004
R1 in W.Ps.40301
and 40316/2005

The District Collector,
Kanyakumari District ...R2 in W.P.19935/2003
R2 in W.P.21033/2003
R1 in W.P.18336/2003

The Superintendent of Police
Kanyakumari District. ...R3 in W.P.19935/2003
R3 in W.P.21033/2003

The Inspector of Police
Vellichanthai Police Station
Kanyakumari District. R4 in W.P.35104/2003

The Inspector of Police
Rajakkamangalam Post
Kanyakumari District .. R5 in WP 41834/2002

The Superintendent of Police
Kanyakumari District at
Nagercoil.

2. The Inspector of Police
Kanyakumari Police Station
Kanyakumari District.

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3. The Inspector of Police,
Aralvaimoyai Police Station
Aralvaimozhi Post,
Kanyakumari District

4. The Inspector of Police
Boothapandi Police Station
Boothapandi Post, Kanyakumari District

5. The Inspector of Police
Vadasery Police Station
Vadasery Post, Kanyakumari District.

6. The Inspector of Police
Anjugamam Police Station
Anjugamam Post
Kanyakumari District ... Respondents 1 to 6 in WP NO. 3154/2003 and R1 in WP 3662/2003

1. The Superintendent of Police
at Kanyakumari District
Nagercoil.

2. The Inspector of Police
Rajakkamangalam Police Station
Kanyakumari District

3. Inspector of Police
Suchindram Police Station
Kanyakumari District

4. The Inspector of Police
Kanyakumari Police Station
Kanyakumari.

5. The Inspector of Police
South Thamaraikulam Police Station
Kanyakumari District

6. The Inspector of Police
Anjugramam Police Station
Kanyakumari District.

7. The Inspector of Police
Eathamozhi Police Station'
Kanyakumari District
.. Respondents in WP 3420/2003

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1. The Director of Drugs Control
Tamil Nadu, Chennai 600 006.

2. The District Collector
Kanyakumari District

3. The Superintendent of Police
Kanyakumari District ... Respondents in WP 3471/2003
WP 3800/2003

The State of Tamil Nadu
represented by Secretary to Government
Health and Family Welfare Department
Fort Saint George, Chennai 600 009.

2. The Director of Drugs Control Tamil Nadu
Chennai 600 006.

3. The District Collector
Nagercoil Kanyakumari District

4. The Superintendent of Police
Nagercoil Kanyakumari District ... Respondents 1 to 4 WPSR NO. 107970/2004 AND WPMP SR NO. 107972/2004

1. The Government of Tamil Nadu represented
by the Secretary, Prohibition and Excise
Department, Fort Saint George, Madras - 9

2. The Commissioner of Prohibition and
Excise Ezhilagam, Chepauk Chennai - 5.

3. The District Collector of Kanyakumari
District, The Collectorate, Nagerocil

4. The Superintendent of Police of
Kanyakumari District, Nagercoil .. Respondents in WP 1294 of 2004 in WP 1294 of 2004 1295, 1296, 1297, 1298, 1299 and 1300/2004

1. The District Collector
Kanyakumari District, Nagercoil

2. The Superintendent of Police
Kanyakumari District Nagercoil

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3. The Assistant Commissioner (Excise)
Nagercoil, Kanyakumari District

4. The Director of Drugs Control
Tamil Nadu Chennai 600 006 ... Respondents 1 to 4 in WP 1885/2004, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893/2004 RR 1 and 2 in WP 1896/2004, 1906, 1918, 2037, 2065/04.

The Inspector of Police
Kottar, Nagerocil,
Kanyakumari District .. R3 in WP 1896/04, 1906/04

1. The Commissioner
(Prohibition and Excise)
Chepauk Chennai

2. The District Collector
Kanyakumari District at Nagercoil

3. The Assistant Commissioner Excise
Collectorate Office
Kanyakumari District ... Respondents in WP 2981/2004

1. The District Collector
Nagercoil, Kanyakumari District

2. The Thasildar (Excise)
Kalkulam Tk, Nagercoil
Kanyakumari District

3. The Revenue Inspector (Excise)
Kalkulam Taluk
Nagercoil, Kanyakumari District ... Respondents 1 to 3 in WP 11154/2004 to R2 in WP 3662/2003 and R1 in WP 12565/2004

1. The District Collector
Nagercoil,
Kanyakumari District.

2. The Special Commissioner and
Commissioner for Prohibition and
Excise, Chepauk, Chennai-5.

3. The Superintendent of Police,
Nagercoil, Kanyakumari District.

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4. The Deputy Superintendent of
Police, (Prohibition Enforcement Wing)
Nagercoil, Kanyakumari District. ..Respondents in WP.11842/04

1. The Superintendent of Police,
Kanyakumari at Nagercoil.

2. The Sub Inspector of Police,
Kollancode,
Kanyakumari District.

3. K.Mony alias Manian
Om Bhagavathy Ayurveda Pharmacy
Kanyakumari District.

4. K.Surendran ..Respondents in WP.11933/04

Appeal No.2943 of 2001 filed under Clause 15 of the Letters Patent against the order of the learned single Judge (KGJ), dated 1.11.2001, made in W.P. No.11135 and 11136 of 2001 respectively.

W.P.Nos.11135 and 11136/2001:

Petitions presented to this Court under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents not to interfere with my right to manufacture for sale ayurvedic Medicines (1) Kanakasavam, (2)Dasamularistam, (3)Jeerakarishtam, (4)Sreekandasavam, (5)Ashokarishtam in Arun Ram Pharmacy, Thickanamcode, Kanyakumari District (2) in T.V.Arun Pharmacy, Kuzheneri, Kulasekaram Post, Kanyakumari District as per the Licence granted to the petitioner under the Drugs and Cosmetics Act respectively.

Petitions presented to this Court under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents to renew the licence in Form L2 under Medicinal and Toilet preparation Excise Duties Act,1955 for the year 2002-2003 and also forbear the respondents from interfering with the business of the petitioner run under the Trade Name Sivanandha Siddha Ayurveda Pharmacy at Manakkarai, Villukkuri Post, Kanyakumari District as licence under Drugs and Cosmetics Act, 1940 (WP.12487/2002)

To issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the second respondent in ப.480755 of 2001 dated 2.5.2002 and quash the same (WP.No.21048/2002).

To issue a Writ of Mandamus, forbearing the respondents herein from taking any action against the petitioner or his servants or agents

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transporting from one place to another place or the petitioner's authorised retail agents under the provisions of Tamil Nadu Prohibition Act 1937, since the petitioner is manufacturing for sale of the unrestricted Ayurvedic Medicinal preparations under Drug Licence No.646/95 of Vithu Pharmacy at Thenkenkuzli in Kanyakumari District issued under the Drugs and Cosmetics Act now pending renewal (WP.No.3662/2003).

WP.3800/2003: To issue a WRIT OF MANDAMUS or any other appropriate writ or order or direction in the nature of writ to forbearing th Respondents or their men or their subordinates from in any way interferring with the manufacturing, selling places and the retail sale at (1) M. Sathyanathanm son of Majanamuthu, No.18-49, kandavillai and post, Eraniel, Police Station, 2) P. Sawmiyadian, S/o Pandaram, No.V 27/96-A, Anajchampathy Villai, Nullivillai, Eranieal Police Station, 3) N. Arumugam Pillai, S/o Weelam Pillai 19-89-B, Paraseri, Eranieal Police Station, 4) N. Baskaran S/o Mani, 1-45-A, Palsampallam, Meelkarai, Eranieal Police Station, 5) G.Mariya Eruthaiyam, S/o. Gnanaprakasam, 4-146, Thanthavillai, Neyyoor Post, Eranieal Police Station, 6) P. Ramasamy, S/o Ponniya Nadar, 9-10/9-7B, Chettivillai Veedu, Kannathuvillai, Eranieel Police Station, 7) T. Paulraj, S/o Tirumal, 121, Udayarpallam, Thalakullam Post, Eramieal Police Station, 8) A. Subbiah Pillai S/o Arumugam Pillai, 9-51 A/9-80, Mariyan Kulzhi, Eranieal, Eranieal Police Station. 9) T. Natarajan, S/o Thangaian Nadar, 6-243 Sadayalpudur, Vellichanthai Police Station, 10) S. Anbaiya, s/o Siluvai Admmai, 39-Ice Plant Street, Keeza multam, Vellichanthai Police Station, 11) P. Thangappan, S/o Perumal, 21-71, Nadankulzam, Kakathoppu Ganapathy Puram Post, Rajakka mangalam Police station, 12) John sundar, S/o Samuvel, 6-150 Pauldannieelpuram, Vampanoor post, Vellichanthai Police Station, 13) P. Gangadharan, S/o Ponnumuthu, 17-55, Tharravillai, Thickanam Code Post, Thuckkalai Police Station, 14) Saraswathi, W/o Mohanan, 17-28, Aattruankarai, Manavalakurichi, Post Manavalakurichi Police Station by Vehicles 74-z 1449 by arbitrarily invoking the provisions of Tamil Nadu prohibition Act, 1937 or the Rules framed thereunder.

To issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the order dated 23.5.2003 in Na.Ka.M4.63497/2002 cancelling the petitioners L.2 Licence and quash the said order and directing the first respondent to consider and dispose of the grant/cancellation of the Petitioner's L3 Licence in the light of the provisions contained in Chapter-VI of the Medicinal and Toilet preparation (Excise Duties) Rules 1956 (WP.No.18336/2003).

To issue a writ of certiorarified Mandamus calling for the records comprised in proceedings of the second respondent in Pa.Mu.No.Ma.A1 (3) 25299/2002 dated 22.10.2002 and quash the same and consequently direct the 3rd respondent to revew the L2 Licence No.17/2002-2003 in favour of the petitioner under Medicines and Toilet preparations (Excise Duties) Act 1955 (WP.No.41834/2002)

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To issue a writ of Mandamus forbearing the respondents herein from interferring with the unresticted preperations manufactured by the petitioner under the Authority of Drug License No.870, dated 11.6.2002 limited init, in the sale to and dealings by the petitioner's retailers (1) N. Retnamany, 18-67, south Kumlal, kayakuri district & Post 2) Chelladurai, 1-30 old No.1-13-A, Vakavilai, Mahadanapuram 3) Chelladurai 5- 38 D, Achanda kottaram and post, M. Manikumar S/o Arumugaparumal 2-69A, Panjaligapuram hahadanapuram and post, 5) M. Chelladurai, 4/38 D, Kottram and Post 6) P. Aurgha Perumal alias Velayudam, 195, Rajalingapuram, Mahadaraparam and post, 7) P. Murugan I-1-115/1, Amarakkavilai, Leepuram and post, 8) Thangadurai 79-I-II (Othapanarkarai) Malayapauram, Kottaram Po., 9) Gurusamy III-5-164 Pattukirlakarai Leeuram Post, 10) S. Davaduraj 15-90-A, Arthia Nagar, Aralwaryly, 11) M. Bagavathy Ammal 9/57, Thanumalayanputhoor, Aralwaimozly 12) Tmt Vasanthi 21-76, Vilavilai, Aralingly, 13) Thangadurai J-105/D, Sarthavilai, Thayalendy, 14) Vivekanandan, 4-51 old No.3-34 Keya Theriasarancope, Azalaipardiapuram & Post 15) Vijayakumar 3/48 Thenikalur, Panathyam and post, 16) Mary Arul Saroja 9-62-66B, Ayakappapuram & post (WP.No.3154/2003.

To issue a writ of Mandamus forbearing the respondents or their man or their subordinates from in any way interfering with the manufacturing the Ayurvedic preparations selling on wholesale or retail and transporting the same to his selling places and the retail Sale at 1) M. Velusamy S/o.Masanam, 15-23-A Plac Road, Thirckalai Police Station 2) Pandian S/o Appam Nadar, 6/110 - A, Elyhavizhagathu Veedu, Manalikarai, Thuckalai Police Station, 3) Lasser S/o Gnanamani 6-18, M/1, Marunthukottai, Thuckalai Police Station, 4) M. gopi S/o Mukkan, 16-7, Thiruvithancode, Thuckalai Police Station 5) P.Murugan S/o Padmanabha Pillai No.17-94/H-11, Muttaikadu, Thuckalai Police Station 6) N. Manikandan S/o Nadarajan Nadar, 27-76-A, Amarvathi, Kozhiboor vilai Thuckalai Police station 7) B. Thitatus S/o Benjamin, 12-99/2 Minijapari Vilai, Thuckalai Police Station 8) N. Sathasivam S/o Nedakanda Pillai 13/39 - P-3A, Thenkankuzhi, Thudeater Police Station, 9) C. Singarayan S/o Chellaryain, 6-193, Pillavetti Vilai, Karungal Police Station 10) N. Rajamani S/o. Nalla Thambi Nadar, 17-60, Aluvelai karai, Thiruvattar Police Station 11) Chellan S/o. Nadan Kutty 13/39-13-A Thiruvattar Police Station 12) S. Joslin Johu S/o Swamy nathan 14/83/15-B1, Puthan Kadai, Thiruvattar Police Station, 13) K. Balakrishnan S/o Kumaraswamy, 9/55, Villukuri Main Road, Eranieal Police Station, 14) G. Gopalakrishnan, S/o Gurusumuthu, 10-24-C2/Nedu Vilai Eramiel Police Station and 15) R. Jausudhas S/o Rajamani 15-51-B1, Arasu vilai, Thuckalai Police Station, by vehicle No.TN-59-C-3415 by arbitrarily invoking the provisions of Tamil Nadu Prohibition Act 1937 or the Rules Framed thereunder (WP.No.19935/2003

To issue a writ of certiorari calling for the records comprised in proceedings of the first respondent in D.Dis.P &E I(3)/27756/2002 dated 4.7.2003 and quash the same (WP.No.21033/2003) and in D.Dis.P&E I (3)/ 25298/2002 dated 29.9.2003 and quash the same (WP.No.35104/2003)

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Prayer in WP.25489/2003
To issue a Writ of Mandamus of any other appropriate Writ, order of direction forbearing the respondents herein from interfering with the manufacture of unrestricted preprations under the authority of Drug Licence No.815, dated 16.2.2003 and transporting them in Motor Matador - TN 74 B 8379 and Auto Rickshows TN 74 7401 and TN 74 2901 in the sales and dealings by the petitioners retailors 1) Tmt.Mary 1/14, Ozhikinacherry, Vadacherry P.O., 1) Thangaraj, 75-A-1, Ramanputhoor Junction, within the limit of Kottar Police Station. 3) Manoharan, 2/26, Anna Boonthai, Putheeri P.O., 4) Jebamani, 26/6-105-S, Kamaraj Puram, 5) Mathi, 789, Vatturniamadam, within the limits of Vadacherry Police Station. 6) Subbu, 8/52-A3, Aeralvoimozhi Junction, 7) Murugan, 5-24- Kakaimoolam Kudieruppu, Thevanai, 8) Maharajan, Theruku Perumalpuram, Aaralvaimozhi, 9)Thangam, M.C.R.Nagar, Aaralvaomozhi, 10) Ananakili, Shenbagaraman Puthoor, Indira Colony, Aralvoimozhi, within the limits of Aaralvoimozhi Police Station. 11) Palani, 6-104-6-27F, Anju Gramam, 12) Thangaraja 87/14, James Town, Madanpillai Dharmam. 13) Shanmuga Velayutham, 5/63, Kamaraj Nagar, Mylau, Anjugramam, within the limts of Anjugramam Police Station. 14) Periya Muthu Nagamani, 538/2, Mukilan Kudieruppu, within the limit of Thamarai kulam Police Station. 15) Manuvelraja - 13/49, Vaira Kudieruppu, Ananda Nadar Kudi P.O. 16) Ganesan, 7-68, Dharmapuram, Ethamozhi P.O., 17) T.christhudas, 76-7-A, Dharmapuram, Ethamozhi P.O., within the limts of Rajjackamangalam Police Station. 18) Chandran, 51-101C, Mangavilai, Puthoor P.O., 19) Muthu, Narayanvilai, Puthoor P.O., 20) Durai Kaliakkavilai, Mangavilai P.O. within the limits of Ethamozhi Police Station, 21) V.Suyambulingam, 33-A, Melakrishnan Puthoor, within the limits of Suchindram Police Station, by arbitrarily invoking the provision of the prohibition Act 1937 on the rules.

To issue a writ of certiorari calling for the records relating to the impugned proceedings of the 3rd respondent in ப.மு.**73320/2002 (ம4)** dated 1.10.2002 quash the same (WP.No SR.107970/2004)

To issue a Writ of Mandamus forbearing the respondents from requiring the petitioner as a manufacturer for sale of unrestrictd Ayurveda preparations of Asawas and Aristas, to take out an L-2 license under the Medicinal and Toilet Preparations (Excise Duties) Act.1955 and its Rules as L-2 license is not necesary in terms of Section 2(c)3 read with Caluse 2(i) of the schedule and Section 6 of the said Act for unrestricted Medicinal preparations of Asawas and Aristahas.(WP.No.1294/2004, 1295, 1296, 1297, 1298, 1299 and 1300/2004)

To issue a Writ of Mandamus forbearing the all respondents from interferring with the preparations of Ayurvedic Medicines at petitioners at Kumari Ayurvedha Pharmacy 3-57-1, Yelusadupattu, Uovalam Post, Kanyakumari District (WP.No.1885/2004)

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Petition at Ramji Ayurvede Pharmacy, 5-42-B, Thammattur Konam (South) Erumbuladu Post, Kanyakumari District (WP.No.1886/2004)

petition at Madava Ayurveda Pharmacy, 15-98 (170, Sumaduthangilai Moolachal, Thuchaly Post, Kanyakumari District (WP.No.1887/2004)

Petition at R.S.Ayurveda Pharmacy No.5/140, A.New No.10138, Elluvillai, Rajakkamangalam Post, Kanyakumari District (WP.No.1888/2004)

Petitioner at Sri Vinayaga Ayurveda Pharmacy No.8/1A, North Tamaraikulam, Agastheeswaram Taluk, Kanyakumari District (WP.No.1889/2004)

Petition at Shree Anjaya Pharmacy No.36-1-117A, Irullapppawarm, Nagarcoil 2, Kanyakumari District (WP.1890/2004)

Petition at Sarjini Ayurveda Pharmacy No.10-10A Asarimar Street, Manavalakurichy Post, Kanyakumari District (WP.1891/2004)

Petition at Sahaya Arul Ayurveda Pharmacy Maravankudiyeruppu, Nagarcoil 2, Kanyakumari District (WP.No.1892/2004)

Petition at Sun Ayurveda Pharmacy No.4-1, Parawarthalanga puram, Pazhathottam Post, Kanyakumari District (WP.1893/2004)

Petition run under the trade name M/S.Meenakshi Ayurveda Pharmacy at No.37/3-67, Aasarimar South Street, Meenakhipuram Agastheeswaram District, Kanyakumari District as license No.955 under Drugs adn Cosmetics Act 1940 and its rules (WP.No.1896/2004 petition run under the trade name M/S.Shanthi Ayurveda Pharmacy at No.8A/16, Marinedunthaur, Badabeswaram Agastheeswaram Taluk, Kanyakumari District as license No.87 under Drugs and Cosmetics Act 1940 and its Rules (WP.No.1906/2004).

Petition run under the trade name M/S.Prithik Ayutveda Pharmacy No.5-89-C, Periakulam Marungoor Post, Agastheeswaram Taluk, Kanyakumari District as license No.928, under Drugs and Cosmetics Act 1940 and its Rules (WP.1918/2004).

Petition run under the trade name M/S.Rajam Ayurveda Pharmacy No.13/71C Thuvarancadu, Boothapady Post, Thovalai Taluk, Kanyakumari District as licence in No.899 under Drugs and Cosmetics Act, 1940 and it rules (WP.2037/2004)

Petitioner run under the trade name M/S.Vinoth Ayurveda Pharmacy No.368/11/111, Avithasapuram, Maharajapuram, Kottaram Post, Agasteeswaram Taluk, Kanyakumari District as a license No.870 under Drugs and Cosmetics Act 1940 and its Rules (WP.2065/2004)

To issue a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent in No.D.Dis.P & E, I (3)

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40920/02 dated 19.1.2004 and quash the same and consequently direct the 2nd and 3rd respondent to grant L2 license with respect to the manufacture of Ayurvedic Medical Preparations in Door.No.2-51-A, Irumpully, Peethapuram Post, Kanyakumari District (WP.2981/2004)

To issue a writ of mandamus, direct the respondents to remove the seal in the premises of M/S.Kalaiman Ayurvedic Pharmacy at No.25/87, B1, Nulli Villai, Karambakadu Post, Kanyakumari District and permit the petitioner to do his bussiness in accordance with law (WP.11154/2004)

To issue a writ of certiorarified mandamus calling for the records of the 3rd respondent made in proceedings D.Dis.P & E.I (3) 39287/03 dated 27.3.2004 confirming proceedings no.MU.MU. (Ma.4) 66692/02 dated 8.10.2003 of the first respondent quash the same and direct the first respondent herein to renew L3 License No.25/99-2000 at the changed premises at No.18, 237, Methukummal Village, Methukummal Post, Kanyakumari District. (WP.11394/2004)

To issue a writ of certiorarified Mandamus calling for the records in proceedings D.Dis.P & E 1(3)/2329/2004 dated 27.2.2004 of the second respondent and quash the same and direct the first respondent to renew L3 licence No.12/95-96 of the petition. (WP.11842/2004)

To issue a writ of mandamus, directing respondents 1 and 2 to take all action on the first petitioner lawyer's notice dated 27.2.2004 issued to them including by stopping the 3rd respondent's illegal manufacture and sale of "Madhukkashayam" on the premises bearing Door.No.4/221 A, Punayakkonam, Oorambu, Kollencode P.O., Kanyakumari District registering criminal cases for the manufacture and sale of the same by him, investigating the same and taking all further and other actions in the same according to law (WP.11933/04)

To issue a writ of certiorarified mandamus calling for the records of the proceedings in M.U.Mu.Ka.No.(1)(3)/41473/2002 dated 3.12.2002 on the file of the 2nd respondent quash the said order and direct the 2nd respondent to entertain the appeal and dispose of the appeal on merits (WP.12565/2004)

To issue a writ of certiorarified mandamus calling for the records of proceedings D.DIS.P & E 1(3)/33601/2002 DATED 24.12.2003 on the file of the 2nd respondent, quash the same and direct the respondents to renew the licence in form L2 under Medical and Toilet preparation Excise Duties Act 1955 for the petitioner business under the Trade Name M/S.Sree Anjanaya Pharmacy at No.36-1-117 A, Irullappapuram, Nagercoil-2, Kanyakumari District.(WP.12566/04)

To issue a writ of certiorarified mandamus calling for the records of the proceedings in D.Dis.P & E I (3)/9606/2002, D.Dis.P & E 1(3)/ 28057/2002 dated 20.2.2004 dated 20.2.2004 on the file of the 1st respondent quash the same and direct the respondents to grant L2 License

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under medicinal and toilet preparations (Excise duty) Act and Rules 1955 for the business carried by the petitioner under the name M/S.Anirutham Ayurveda Pharmacy at No.14/4, 144-145, College Road, Nagercoil, Kanyakumari District (WP.16857/2004)and M/S.Vijay Ayurvedic Pharmacy at 29/4/74, Thanjaikarukudi Iruppu, Agasteeswaram PO, Nagercoil, Kanyakumari District. (WP.16943/2004) respectively.

To issue a writ of mandamus, directing the respondent to issue the license in Form 2 under Medicinal and Toilet preparations Excise Duty Act, 1955 for the business carried by the petitioner under the name of Prithile Ayurveda Pharmacy at No.5/89-C,Periakulam,Manungoor Post, Nagercoil, Kanyakumari District on consideration of may application dated 27.2.2003 (WP.16942/2004)

To issue a writ of certiorarified mandamus, to call for the records of the first respondent relating to his order dated 16.5.2005 in D.Dis. P & E 1(3)/4143/94 and D.Dis.E 1(3)/41544/2004 and quash the said order of the first respondent, directing the respondents to restore to the petitioner in L2 License No.1/80-81 and License No.8/68-69 duly reviewing it and pass such other or further order of this Honourable Court (WP.40301 and 40316 of 2005)

Mr.V.Selvaraj, for Appellants in WA Nos.2943 and 2944/01 & for petitioners in WPs.21048 of 2002 and WPSR No.107970 of 2004.

Mr.M.Kalyanasundaram, Senior Counsel
for Mr.K.J.Bharathi Mohan,
for petitioners in WP Nos.1294 to 1300/04, 40316/05, 40301/05; 3154, 3420, 18336, 25489 of 2003; 1896, 1906, 1918, 2037 and 2065/04.

Mr.C.K.M.Appaji for Petitioners in WP.2981/04.

Mr.T.Udayakumar, for Petitioners in WPs.1896, 1906 1918, 2037 and 2065 of 2004.

Mrs.Hemalatha, for petitioner in W.P.16943 of 2004.

Mr.R.Thirugnanasambantham, for petitioners in WP Nos.3471, 19935/03 & 12487/02.

Mr.M.Benajamin Doss, for petitioners in WP Nos.3662 of 2003 and 11394 of 2004.

Mr.H.Velavadoss for Petitioners in WPs.3800, 21033, 35104/03, 1885 to 1893/04, 41834/02 & R-4 in WP.11933/04.

Mr.S.Parthasarathy, for Petitioner in WP.11154 of 2004.

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Mr.A.Selvaraj, for Petitioner in WP.11842 of 2004.

Mr.K.N.Thambi, for petitioner in W.P.11933 of 2004.

Ms.S.Hemalatha, for petitioner in WP.16857, 16942, 12565 & 12566 of 2004.

Mr.R.Muthukumarasamy, Additional Advocate General, assisted by Mr.D.Krishnamumar, Spl. Govt. Pleader, for State.

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COMMON JUDGMENT

P.SATHASIVAM, J.

Since the issue raised in all these matters is one and the same, they are being disposed of by this common Judgment.

2. (a) Writ Appeal No.2943 of 2001 has been filed against the order of the learned single Judge, dated 01.11.2001, made in W.P. No.11135 of 2001, in and by which, the learned Judge, following the earlier order of this Court, dated 21.08.2001, made in W.P. Nos.2036 to 2038 of 2001, dismissed the Writ Petition along with two other connected Writ Petitions.

(b) Writ Appeal No.2944 of 2001 has been preferred against a similar order, dated 01.11.2001, made in W.P. No.11136 of 2001.

(c) In most of the Writ Petitions, the prayer is for the issuance of a writ of mandamus, forbearing the respondents viz., the Secretary, Prohibition and Excise Department, Government of Tamil Nadu; the Commissioner of Prohibition and Excise, Chennai-5; the District Collector of Kanyakumari; and the Superintendent of Police, Nagercoil, from requiring the petitioners as manufacturers for sale of unrestricted Ayurveda Preparations of Asawas and Aristas to take out L-2 Licence under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and its Rules.

(d) In some of the Writ Petitions, the petitioners prayed for the issuance of a writ of certiorarified mandamus for quashing the order of the Commissioner of Prohibition and Excise, Chepauk, Chennai-5, wherein, the said Authority rejected the request of the petitioners for renewal of L-2 Licence.

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3. The brief facts are as follows:-

According to the petitioners, they are engaged in the manufacture of unrestricted Ayurvedha preparations of Asawas and Aristas in Kanyakumari District. The public in Kanyakumari District have been consuming Asawas and Aristas for specific ailments and as a tonic. Many in Kanyakuamri District are hereditary Ayruvedha Vaidiyas. The

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preparations of Asawas and Aristas are done as per the formulae prescribed in the Ayurvedha Pharmacopea-Shagasra Yogam, the original of which has been in Malayalam. The preparations are made out of medicinal plant parts such as their flowers, leaves, nuts, stems, barks etc. and they are crushed in proportions, medicines added with water and the preparations undergo fermentation for a period of 30 days and periodically medicines are added to them. The preparations that do not undergo boiling process are Asawas and those that undergo boiling initially are Aristas and they are not obtained by distillation or by adding alcohol in which case alone the preparations would turn out to be restricted preparations containing high percentage of alcohol. By consumption of Asawas and Aristas, there is no harm to the life or parts of the human body as it causes in the case of illicit preparations, which are made in different parts of the State or in other States.

In 1955, the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and its Rules came to govern the Ayurvedha Medicinal and Toilet Preparations. No upper limit of alcohol is prescribed for the preparations. Rule 2 (xix) read with Rule 60 read with the Schedule to the Rules provides a list of restricted preparations. As per Rule 2(xx) read with Rule 60 all others are unrestricted preparations ie., those that are not capable of being consumed as ordinary alcoholic beverages. As per Rule 64, Asawas and Aristas are the principal type of Ayurvedic medicinal preparations. As per Rule 53, periodical samples are taken by the officials of the Excise Department for analysis. As per Rule 60(2), based on the reports, unrestricted preparations could be reclassified as restricted preparations by the Standing Committee constituted under Rule-68. The licensing provisions are in Chapter VI Rules 82-96.

Section 3(9) of the Tamil Nadu Prohibition Act defines the term 'liquor' as all those containing alcohol or consisting of alcohol. Since presence of any percentage of alcohol could make the preparations a liquor bringing under the purview of the Act, Section 16 of the Act exempts Medicinal and Toilet Preparations containing alcohol, used as medicines and for scientific and industrial purposes, from the purview of the Act. The same Section provides for punishment for breach of the conditions of the exemption, as per which, the 1st respondent notified the regulations. According to clause 7, there is no restriction or regulation in respect of unrestricted preparations, the regulations having been imparted only on restricted preparations. Then, by virtue of the power under 54(m) of the Tamil Nadu Prohibition Act, the Government is empowered to frame Rules for regulating the exempted items. Tamil Nadu Spirituous Preparations (Control) Rules, 1984, in supercession of the earlier Government order, has been framed.

Under Amendment Act 23 of 64, amendment has been brought in, seeking to govern the Ayurveda, Homeopathy and Unani medicines as well, and Chapter IV-A has been introduced. The State Government could enforce this by notification and the Tamil Nadu Government enforced it around 1978. As per the drugs Rules, unrestricted Ayurveda preparations should not exceed 12% of alcohol. Schedule-T of the Rules prescribe the detailed equipment and accessories and technical personnel to be provided in an Ayurvedic

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manufactory and after verification of the equipment the drug licence is issued. In Kanyakumari district, the manufacturers have provided a manufactory as per the Drug Rules, with technical personnel as required by 2002 amendments. The samples of the preparations are periodically taken by drug officials.

While thus there are enough regulations in the trade of manufacture of Asawas and Aristas, in the past 3 years, L2 licenses for manufacture / sale are not granted or renewed and existing license of more than 100 licences in Kanyakumari District have been cancelled and the police are misusing the Tamil Nadu Spirituous Preparation (Control) Rules by arbitrarily interfering with the trade by arresting the persons in the trade, seizing the stock and launching prosecutions. Hence, the Writ Petitioners are before this Court.

4. Heard Mr.M.Kalyanasundaram, learned Senior Counsel for some of the petitioners; Mr.V.Selvaraj, learned counsel for the appellants and some of the writ petitioners; Mr.C.K.M.Appaji for petitioner in W.P. No.2981 of 2004; and Mr.R.Muthukumarasamy, learned Additional Advocate General for respondents/State.

5. Though an argument was advanced by Mr.M.Kalyanasaundaram, learned Senior Counsel, that inasmuch as all the petitioners are having licence under the Drugs and Cosmetics Act, 1940, and in view of the contents of the preparations made by them, there is no need to get the L-2 licence; considering the fact that the petitioners and other similarly placed manufacturers are liable for levy of Excise Duty, the said contention is to be rejected. In fact, the learned Senior Counsel himself has informed this Court that the petitioners would be satisfied if necessary direction is issued to the authorities to consider their claim in the light of the relevant Rules in the licensing Chapter, particularly Rule-95 of the Medicinal and Toilet Preparations (Excise) Duties Rules, 1956, when they make applications for grant of L-2 licence.

6. Mr.V.Selvaraj also requested for a similar direction to the authorities concerned for compliance of Rule-95 while processing their Application for L-2 licence.

7. Mr.R..Muthukumarasamy, learned Additional Advocate General, has brought to our notice that the issue raised in these Writ Petitions has already been settled by various orders passed by the learned single Judges of this Court, confirmed by the Division Bench, as well as the decisions of the Apex Court. He drew our attention to the decision of the Apex Court in Kanyakumari Dist. S. & A.V. Sangam vs. Govt. of T.N. (AIR 1996 SC 1314) as well as judgments of this Court reported in 2002 Writ Law Reporter. 498 (A.Jesu Arul, etc. v. The Superintendent of Police, Kanyakumari District at Nagercoil and another)(D.B.) and 2004 Writ Law Reporter 235 (Kumarapillai Vaidyar v. The District Collector, Nagercoil), and contended that all the Writ Petitions are liable to be dismissed.

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8. We have considered the rival contentions. In view of the limited relief sought for and of the fact that the issue in question has been settled by a series of decisions of this Court and the Hon'ble Supreme Court, we are of the view that it is unnecessary to refer all the factual matrix as stated.

9. It is not in dispute that the petitioners are engaged in the manufacture of Asawas and Aristas and all of them are from Kanyakumari District. It is also not in dispute that the petitioners have obtained licence under the Drugs and Cosmetics Act, 1940. As said earlier, though it is the claim of the petitioners that there is no need to obtain L-2 licence under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in view of interpretation of provisions, declaring it necessary to take L-2 Licence, it is but proper that all concerned must secure L-2 licence.

10. Before going into the relevant provisions in the licensing Chapter in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, let us consider the decisions relied on by the learned Additional Additional General. At the foremost, by placing reliance on the decision reported in AIR 1996 SC 1314 (cited supra), he contended that the State Government is well within their power in requiring the Manufacturers of the Medicinal and Toilet preparations containing alcohol to apply for License. Considering the provisions of the Tamil Nadu Spirituous Preparation (Control) Rules, 1984, the Supreme Court concluded that to regulate the sale of medicinal or toilet preparations containing alcohol and/or intoxicating drugs is consistent with the scheme and provisions of the Tamil Nadu Prohibition Act i.e., prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State. It was further concluded that the restriction of obtaining licence under Rule 11 of the Tamil Nadu Spirituous Preparation (Control) Rules (1984) and other restrictions imposed by the said Rules (1984) are consistent with the provisions of the Tamil Nadu Prohibition Act (1937) and the State Government had authority to frame such Rules under Section 54 (2) (m) of the said Act (1937). In the said case, it was the stand taken by the Kanyakumari District Sidha and Ayruveda Vaidyar Sangam and others before the Supreme Court that they are dealing in many products of indigenous system of medicines and all of them do not contain alcohol. In other words, according to them, majority of the medicinal preparations are neither spirituous preparations nor restricted preparations containing any alcohol. Rejecting their contention, the Hon'ble Supreme Court concluded thus:-

> " ..... This according to us, is of no significance or consequence. Once it is found that the appellants have been dealing and selling any medicinal preparation through indigenous system of medicines which can be held to be restricted preparation or

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spirituous preparation then the provisions of the Rules shall be attracted and the appellant can deal only on basis of licences being granted for the same. The notification through which the rules were notified as already mentioned above clearly indicate the object and the reason for framing such rules. The primary object is to regulate the sale of medicinal or toilet preparations containing alcohol and/or intoxicating drugs, which is consistent with the scheme and provisions of the Act ie., prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu. The impugned order of the High Court requires no interference. The appeal is accordingly dismissed....."

11. In W.P. Nos.16133 of 1991 and 2870 of 1992, order dated 17.04.2000, a learned single Judge had an occasion to consider a similar prayer from the manufacturers of Asawas and Aristas. The learned Judge, after considering the provisions of the Drugs and Cosmetics Act, 1940; the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the Rules made thereunder, rejected the relief prayed for by the petitioners. The learned Judge dismissed the Writ Petitions by concluding that if the relief as prayed for is granted, it will lead to unregulated preparation, on which, the State will have no control and it will affect ultimately the public health.

12. It is also brought to our notice that in W.P. Nos.2036 to 2038 of 2001, order dated 21.08.2001, another learned Judge negatived similar relief.

13. Following the Division Bench decision in W.A. No.360 of 1998, dated 19.3.1998, and after referring to the decision in W.P. Nos.16133 of 1991 and 2870 of 1992, dated 17.4.2000, as well as the definition for the term 'liquor' as given in Section 3(9) of the Tamil Nadu Prohibition Act; another Division Bench of this Court, in the decision reported in 2002 Writ L.R. 498 (cited supra), concluded thus:-

" The above definition leaves no doubt that all liquid consisting of or containing alcohol would be attracted within the definition. It is not as if this definition excludes medicinal preparations or alike In such case as held by the Supreme Court as well as by the Division Bench of this Court, followed by the learned single Judge, so long as the petitioners are preparing liquid medicine containing alcohol even if it be self generated their trade is to be restricted or regulated by the State Government. Hence, it is necessary that they have to take the licence as contemplated under Rule 11 of the Tamil Nadu Spirituous Preparations (Control) Rules.

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28. This is more essential because when the trade in liquor is being controlled or regulated by the State Government the State Government should have necessary Jurisdiction or authority to exercise the same on all those who are trading in liquor. If no licence is taken by the petitioners, then the State Government cannot exercise any control over them or regulate though the petitioners products or preparations or manufacture falls within the expression 'liquor' as defined under the Prohibition Act.

29. As rightly pointed out by the Division Bench of this Court in W.A.360/96 it is the individual cases to be considered as to whether the action taken by the State Officials is correct or not. When that be the case, the contention of the learned counsel for the petitioners that the Tamil Nadu Spirituous Preparations (Control) Rules is beyond the legislative competence cannot be countenanced.

30. Wherever the permissive limit or percentage of the contents of alcohol in such medicines exceed, then it is an intoxicating liquor as defined in the prohibition Act and only the State Government has authority to take action.

31. As pointed out by the Apex Court in Southern Pharmaceuticals & Chemicals case (AIR 1981 SC 1863) the Tamil Nadu Spirituous Preparations (Control) Rules occupied totally a different field and never transgress the occupied field of the Central Government either under the Drugs and Cosmetics Act or the Medicinal and Toilet Preparation Rules."

14. In 2004 Writ L.R. 235 (cited supra), while dealing with a batch of Writ Petitions, seeking similar reliefs, a learned single Judge, following the decision of the Supreme Court reported in 1996(8) SCC 342 : AIR 1996 SC 1314 (cited supra) and the Division Bench decision of this Court rendered in W.P. Nos.1211 of 1995 etc. (reported in 2002 Writ L.R. 498 [cited supra]); disposed of the Writ Petitions by issuing certain directions. The learned Judge permitted the official respondents to take action in accordance with law, particularly under the Drugs and Cosmetics Act and the Rules framed thereunder, Tamil Nadu Prohibition Act, the Tamil Nadu Spirituous Preparations (Control) Rules, 1984 and the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956.

15. In AIR 2005 SC 932 (State of Bihar v. Shree Baidyanath Ayurved Bhawan (P) Ltd.), while considering the provisions under the Bihar Excise Act and the relevant Rules, which are similar to that of the Tamil Nadu Spirituous Preparations (Control) Rules, 1984, the Supreme Court concluded that when the Ayurvedic preparation is diverted to human consumption the State shall have the power to regulate and control such use. Concluding so, the Apex Court upheld similar restriction and the action taken by the

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Government of Bihar.

16. In view of the various pronouncements, the petitioners cannot be permitted to contend that there is no need to take L-2 licence. Further, in view of the fact that the product is dutiable, undoubtedly, the persons in charge of the manufacture have to obtain such licence.

17. As said earlier, the other grievance of the petitioners is that when they apply for L-2 licence, the licensing Authority is not considering their claim as per the Rules provided in the Licensing Chapter. Chapter VI of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, deals with the licensing procedure. Rule-82 refers to the procedure for obtaining licence. Rule-84 relates to grant of licence. Rule-95 prescribes the procedure for disposal of Application for licence to manufacture medicinal and toilet preparations in a bonded/non-bonded manufactory by the licensing authority. Sub Rule-(1) thereto makes it clear that on receipt of an application, it is the bounden duty of the licensing authority to cause enquires into the following:-

> " (i) the qualifications and previous experience of technical personnel engaged in the manufacturing operation;
>
> (ii) the equipment of the bonded and non-bonded manufactory;
>
> (iii) soundness of the applicant's financial position; and
>
> (iv) suitability of the proposed building for the establishment of manufactory. "

As per Clause-2, if the licensing authority is satisfied in respect of the enquiries made on the above aspects, then, he is bound to grant licence.

18. In view of the above discussion and the statutory provisions as interpreted in various decisions of this Court and the Apex Court, we are satisfied that the relief as prayed for by the petitioners cannot be granted. However, it is made clear that if any application is made for grant of licence, the authority concerned is bound to follow the procedure provided in the licensing chapter, particularly Rule-95 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 and dispose of the application expeditiously.

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19. With the above observation, the Writ Appeals as well as the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To
1. The Secretary to Govt.,
Health & Family Welfare Department,
Fort St. George,
Chennai-9.

2. The Director of Drugs Control,
Tamil Nadu,
Chennai-6.

3. The District Collector,
Nagercoil,
Kanyakumari District.

4. The Superintendent
of Police,
Nagercoil,
Kanyakumari District.

5. The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.

6. The Commissioner for Prohibition and Excise,
Chepauk, Chennai 5.

7. The Assistant Commissioner (Excise),
Nagercoil, Kanyakumari District.

8. The Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
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9. The Inspector of Police,
Prohibition and Excise Wing,
Thuckkalai, Kanyakumari District.

10. The Inspector of Police,
Veelichanthai Police Station,
Kanyakumari District.

11. The Inspector of Police,
Rajakkamangalam Post, Kanyakumari District.

12. The Inspector of Police,
Kanyakumari Police Station, Kanyakumari District.

13. The Inspector of Police,
Aralvaimozhi Police Station,
Aralvaimozhi Post, Kanyakumari District.

14. The Inspector of Police,
Boothapandi Police Station, Boothapandi Post,
Kanyakumari District.

15. The Inspector of Police,
Vadasery Plice Station,
Vadasery Post, Kanyakumari District.

16. The Inspector of Police,
Anjugramam Police Station,
Anjugramam Post, Kanyakumari District.

17. The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.

18. The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.

19. The Inspector of Police,
Eathamozhi Police Station,
Kanyakumari District,

20. The Secretary to govt. of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Madras 9.

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21. The Inspector of Police,
Kottar, Nagercoil, Kanyakumari District.

22. The Thasildar (Excise),
Kalkulam Taluk, Nagercoil, Kanyakumari District.

23. Revenue Inspector [Excise],
Kalkulam Taluk, Nagercoil,
Kanyakumari District.

24. The District Collector of Kanyakumari District,
The Collectorate, Nagercoil.

25. The Superintendent of Police,
Kanyakumari District, Nagercoil.

26. The Special Commissioner and Commissioner
for Prohibition and Excise, Chepauk, Chennai 5.

27. The Deputy Superintendent of Police,
[Prohibition Enforcement Wing],
Nagercoil, Kanyakumari District.

28. The Sub Inspector of Police,
Kollamcode, Kanyakumari District.

29. The Assistant Commissioner [Excise],
Collectorate Office, Kanyakumari District.

+ 1 CC To Mr. G. Sethuraman, Advocate SR NO.20146
+ 1 CC To Mr. CKM.Appaji, Advocate SR NO.20516
+ 1 CC To Mr. K.N.Thampi, Advocate SR NO.20270
+ 1 CC To Mr. V.Selvaraju, Advocate SR NO.1951
+ 1 CC to the Government Pleader SR NO 19737
+ 1 CC To Mr. G.Parthasarathy, Advocate SR NO.19865
+ 4 CCs to Mr.R. Subramanian, Advocate SR NO 19692 to 19695

vc(co)
gp, km, kk, nm, dv, sr, rvl, rsm/3.7.
Compared by Is,Vb/4.7.

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